U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30116386

Date: MAR. 14, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a mountaineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not specify his intended employment in the United States, and therefore the Director could not determine whether the Petitioner had established sustained national or international acclaim in his field. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The petition must be accompanied by clear evidence that the noncitizen is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States. 8 C.F.R. § 204.5(h)(5). The Director determined that the Petitioner "did not clearly identify . . . the area of expertise he is claiming." As explained below, we disagree with this determination, and will remand the matter for a decision on the merits.

When he first filed the Form I-140 petition in October 2021, the Petitioner left blank the line marked "Occupation." In a separate statement, the Petitioner stated his intention "to work in the Mountaineering activities service and industry in the United States." The Petitioner listed several diverse occupations related to mountaineering, such as "[o]utdoor tour operating," "[c]limbing event organizing," "[a]valanche forecasting," and "[c]limbing and skiing film making." The Petitioner did not specify which of these occupations he intends to pursue in the United States.

In January 2023, the Director issued a request for evidence, stating: "It is unclear as to what the beneficiary intends as his occupation or area of claimed extraordinary ability."

In response, the Petitioner submitted a second copy of the Form I-140 petition, listing his occupation as "Mountain Guide, climb/ski instructor." The Petitioner also submitted a letter from an employer that had hired the Petitioner "as a part-time seasonal Ski Instructor" in November 2022.

The Director denied the petition in March 2023, stating: "the beneficiary has not specified one area of expertise. As such, an analysis of the claimed criteria [at 8 C.F.R. § 204.5(h)(3)] cannot be conducted prior to the beneficiary specifying one area of expertise to which all the claimed criteria should apply."

On appeal, the Petitioner states:

> The Rock Climbing, Mountaineering and Backcountry Skiing sports belong to mountaineering activities. . . .
>
> These three sports (cultures) are tightly fused to each other requiring common skills, philosophy and knowledge.
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> . . . .

> About my intentions for working as a rock climbing, mountaineering and skiing guide/instructor . . . I have mentioned the summer and winter seasons separately . . . leading [the Director] to a confusion and misinterpretation about identifying the one area of expertise.
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> . . . .
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> . . . [M]y intention is to work in the United States as a mountain guide/instructor (that necessarily means for rock climbing, alpine climbing and backcountry skiing).

We conclude that the Petitioner has adequately identified his intended area of employment. The Director appears to have interpreted the phrase "rock climbing, mountaineering and skiing" as referring to three entirely separate activities, whereas the Petitioner's evidence indicates that the activities are all mountain sports, interrelated to a sufficient extent that one could consistently claim expertise, recognition, and employment in all three.

The next step is for the Petitioner to establish extraordinary ability as a climbing and skiing instructor. The Petitioner claims to have satisfied six of the ten extraordinary ability criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Director, in the denial notice, did not consider these claims in any detail. Rather, the Director stated the general conclusion that "the record does not show [the Petitioner's] work has [been] recognized at a level indicative of a record of sustained acclaim or that he is among that small percentage at the very top of the field of endeavor." The Director did not explain how they reached this conclusion or what evidence they considered in doing so.

The Director's general statement of ineligibility does not explain the specific reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i). Therefore, the Petitioner did not have an opportunity to address specific concerns on appeal. The Director must consider the Petitioner's specific claims and evidence relating to the six claimed criteria. In so doing, the Director should also take into account whether the evidence relates to the Petitioner's intended occupation as an instructor in mountaineering sports. If the Director determines that the Petitioner has satisfied at least three of the evidentiary criteria, then the Director must undertake a final merits determination as described in *Kazarian*.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.